

Before the
Federal Communications Commission
Washington, D.C. 20554

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In re: Memorandum Opinion and Order,)	FCC 00-149	FCC MAIL ROOM
Released April 28, 2000)		
Regarding the Applications of)	MM Docket No. 86-440	
Achenar Broadcasting Company)	File No. BPCT-860410KP	
And)		
Lindsay Television, Inc.)	File No. BPCT-860410KQ	
And)		
The Givens & Bell Division of)	File No. BPCT-961023KF	
Blue Ridge Video Systems)		
And)		
The Petition of Givens & Bell)	Submitted March 13, 2000	
for Rule Making Seeking a New Channel)		
As per Public Notice DA 99-2605)		

For Construction Permit for a new Television Station on Channel 64, Charlottesville, Virginia

To: The Commission

**PETITIONER'S REPLY TO FILING OF CHARLOTTESVILLE
BROADCASTING CORPORATION, DATED JUNE 7, 2000.**

1. Charlottesville Broadcasting Corporation, a District of Columbia corporation (CBC of D.C.) Replied in Opposition on June 7, 2000, to the Opposition, Protest, and Petitions of the Givens & Bell Division of Blue Ridge Video Services (Givens & Bell). Givens and Bell hereby submits its "Petitioners' Reply" to the issues and questions raised in the CBC of D.C. Reply.

2. In paragraph 4, CBC of D.C. states that "at no time during the pendency of the court appeal were the applications of Achenar and Lindsay dismissed and at no time since the original 1985 applications cutoff has there been a vacant Channel 64 available for application." CBC of D.C. bases its statement on having made "a timely appeal to

the United States Court of Appeals for the District of Columbia Circuit.” In fact, the appeal to the District Court did not necessarily have a bearing on the status of the Achenar and Lindsay applications before the Commission. With respect to the Commission, the last filing, that regarding the petition for reconsideration of its final appeal review filed by Lindsay Television on October 21, 1991, was denied on February 26, 1992. At some point after March 5, 1992, the applications of Achenar and Lindsay were removed from pending status; this was verified by the Commission when it de-listed the DTV transition assignment for Ch. 64 at Charlottesville/¹. This de-listing was a step it could not take without making a determination, at a date long after the District Court decision had been made, that the application of Lindsay, (which prior to October 24, 1991 had been granted a construction permit), was, at some point prior to the granting of the initial DTV licenses, not pending, nor would any future re-instatement be retroactive to its dismissal. The Commission’s own CDBC database when accessed via Internet, as late as March 15, 2000, under Station Search Details for the Lindsay and Achenar applications, reported the Status: as “Unknown Status”; the applications search reported the Status: as: “Designated for Hearing”. The decision of the District Court merely “remand(ed) both license applications to the Commission for an adequate inquiry and explanation of what test of the public interest it is using in the case of astronomy channel use.” This did not, in and of itself, reinstate the applications of Lindsay and Achenar before the Commission; to do so, and the timing of same, is an act only the Commission is

¹ In the Sixth Report and Order, FCC 97-115, para. 17, the Commission “determined that initial eligibility should be limited to those broadcasters who, as of the date of issuance of the initial licenses, hold a license to operate a television broadcast station or a permit to construct such a station, or both. In foot note 26, it

authorized to perform, and was only one option the Commission had as a result of the Court decision. The Commission's options included further development of its policy regarding protection of the NRAO. Givens and Bell also provided an alternative option, in its application for construction permit, of showing that accommodation of both the public interest and the interests of the NRAO could be achieved by the proper solution, a solution based upon both technology and precedent, and a solution which neither Achnar or Lindsay had proposed.

3. Givens & Bell's application was stalled for four years, awaiting promised Commission action to consider its Petition to waive the Freeze Area as it affected Charlottesville; therefore, it was the position of Givens & Bell, after submitting its application, and subsequently discovered that the District Court has remanded the matter, that it (a) expected the Commission to find a way to finally, permanently dismiss any consideration of Achenar and Lindsay based, if necessary, upon the possibility of an acceptable alternative solution as presented in the Givens & Bell application, and (b) that it did not have status in this proceeding to comment, until the Commission, by its actions in FCC 00-149, precluded consideration of the Givens & Bell application, and ignored the effort, expense, and expertise expended in developing and preparing the Givens & Bell application.
4. The information provided by CBC of D.C. regarding its location of charter, begs the Commission to question why a corporation formed primarily to do business as a

continues: "We will give particular consideration for assigning temporary DTV channels to new licensees who applied on or before October 24, 1991,".

television station in Charlottesville, Virginia would be chartered in the District of Columbia with a corporate name under which it cannot do business in Virginia without registering as a Foreign Corporation with a designated name, as required by the Code of Virginia, Title 13.1-630(C)(3)? This creates unneeded confusion, as the Commission would have to distinguish between two Charlottesville Broadcasting Corporations, both with interests in Charlottesville, Virginia, and, in fact, both broadcasting from the same tower.

5. With respect to CBC of D.C.'s claim in paragraph 4 of its reply that "Petitioner fails to support any of its claims—including those dealing with radio interference—with the requisite affidavits or sworn statements", the rule to which it refers, 47CFR1.106(e) requires an affidavit of a qualified radio engineer only when the interference applies "to an existing station or a station for which a construction permit is outstanding". The interference in question is to a radio-telescope receiver, not a "station". Since a modification of a construction permit on motion of the Commission is involved, 47CFR1.87(e) is applicable; it states that "both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission." It is not Givens & Bell's place to provide final proofs in this matter except as requested to do so by the Commission; it was, in the Opposition and Protest, only appropriate to point out fatal errors and other matters for further investigation by the Commission, and to be prepared and able to provide evidence and technical proof, on request of the Commission, with regards to said allegations. We did further volunteer to provide evidence and submit additional facts in these

matters, in order to provide speedy justification for the remanding and dismissal of the applications of Achenar and Lindsay.

6. Givens & Bell admits and begs forbearance of the Commission regarding the facially deficient and prolix nature of it's Protest and Opposition filing. With respect to a Summary, the last two paragraphs of the filing should be considered the Summary. In responsive reply to the question(s) raised in the reply of CBC of D.C., we are preparing a less prolix, more compliant version of our original, desperately hurried, last-minute submission, which we are prepared to submit as a replacement, if the Commission will allow. We request that the Commission accept our facially deficient and prolix submission based upon the merit of it's content. If the Commission will not accept our prior submission on the grounds stated in footnote 2 in the reply, we would request to be allowed to submit the direct replacement.

CONCLUSION

Givens & Bell have responsively replied to the Opposition to Filing filed by CBC of D.C. on June 7, 2000. The Commission should now proceed to consider the Opposition, Protest and Petitions of Givens & Bell.

Respectfully submitted,

A handwritten signature in black ink, reading "Sidney E. Shumate". The signature is fluid and cursive, with the first name "Sidney" and last name "Shumate" clearly legible, and "E." as a middle initial.

Sidney E. Shumate, Principal Owner, Givens & Bell